

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

In re Pravastatin Antitrust Litigation

Civil Action No. 2:16-cv-05056-TON

This Document Relates to:  
Civil Action Nos.: 2:16-cv-06057,  
2:16-cv-06321, 2:16-cv-06395,  
2:16-cv-06421, 2:16-cv-06632,  
2:16-cv-06667, 2:16-cv-06699,  
2:17-cv-00013

**PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF MOTION TO  
ADJOURN SCHEDULING ORDER**

Plaintiffs jointly submit this Memorandum in support of their motion to adjourn the schedule set forth in the stipulation dated December 12, 2016 ("December 12 Stipulation") that was approved by the Court on December 20, 2016 (Dkt No. 35; the "Stipulation Order").

Since the entry of the Stipulation Order, which set forth a schedule for the filing of the consolidated amended complaint and motion to dismiss briefing, a number of events have occurred that warrant the adjournment of that schedule.

First, a direct purchaser plaintiff, Rochester Drug Co-Operative Inc. ("Rochester Drug"), filed papers with the Judicial Panel on Multidistrict Litigation ("JPML") seeking to transfer the numerous cases filed outside the Eastern District of Pennsylvania to the MDL currently styled as *In re Digoxin and Doxycycline Antitrust Litigation* (No. 16-md-2724) that is pending before the Honorable Cynthia M. Rufe ("MDL 2724"). Rochester Drug further seeks to transfer the cases in *In re Pravastatin Antitrust Litigation*,

No. 2:16-cv-05056 (the “Pending Pravastatin Actions”) to MDL 2724 via an intra-district transfer. In addition, Rochester Drug has requested that the name of the MDL be changed to *In re: Generic Pharmaceuticals Pricing Antitrust Litigation*. The JPML has ordered that responses be filed by January 30, 2017.

Second, five additional, related End-Payor Plaintiff (“EPP”) actions and two related Direct Purchaser (“DPP”) actions were filed in this Court after the negotiation of the stipulated schedule, thus necessitating a revised schedule that includes leadership briefing (which the current schedule does not include). Leadership will need to be appointed so that interim lead counsel can efficiently and economically prepare a Consolidated Amended Complaint. In addition, resolution of the pending DPP motion to establish a separate consolidated Direct Purchaser Action to be coordinated with the consolidated End-Payor Action will affect the nature of the Consolidated Amended Complaint.

Plaintiffs attempted to resolve this issue through discussions with Defendants, but the parties reached an impasse when Defendants refused to agree to the short adjournment of the schedule that Plaintiffs seek here.

### **ARGUMENT**

#### **I. In Light of the Efforts to Transfer the Pravastatin Cases, the Schedule Should Be Adjourned**

In addition to the nine cases that comprise the Pending Pravastatin Actions, on December 27, 2016, Rochester Drug (another direct purchaser of pravastatin) filed a complaint in the United States District Court for the Eastern District of Pennsylvania (No. 16-cv-6661) containing allegations that are substantially similar to those in the Pending Pravastatin Actions. Rochester Drug, however, designated its pravastatin case as related to

MDL 2724, rather than relating it to the Pending Pravastatin Actions. Judge Rufe determined that it was “not properly filed in MDL 2724 as presently constructed” and instead, pending further order, accepted it as related to the first-filed case in that MDL “for purposes of judicial administration.” (Ex. 1 at 1.)

Subsequently, on January 5, 2017, Rochester Drug filed a motion with the JPML seeking to coordinate or consolidate multiple DPP cases pending in other Districts alleging price fixing of a number of generic drugs with MDL 2724. (MDL No. 2724, Dkt. No. 125.) This motion does not seek to coordinate or consolidate the EPP cases that are also pending in these Districts alleging price fixing of the same generic drugs. The JPML has required responses to that Motion to be filed by January 30, 2017. Plaintiffs expect that many of the parties in the Pending Pravastatin Actions will file responses to that motion. However, the parties are not all aligned. Some will join Rochester Drug’s request that all of the generic prescription drug price-fixing cases be centralized before a single judge or in a single District, while others will object to that request.

In addition to requesting transfer of the DPP cases pending in other Districts to Judge Rufe, in its JPML filing, Rochester Drug also identified the Pending Pravastatin Actions as “Related Actions.” Specifically, Rochester Drug stated:

Related Actions concerning these [six] generic pharmaceuticals and two other generic pharmaceuticals, Divalproex ER and Pravastatin, have also been filed in the Eastern District of Pennsylvania and are currently pending before the Honorable Cynthia M. Rufe (who is overseeing MDL No. 2724), the Honorable Gene E.K. Pratter, and the Honorable Thomas N. O’Neill Jr. It is Plaintiff’s understanding that any actions pending in the Eastern District of Pennsylvania that may require transfer should be addressed pursuant to the Local Rules of the Eastern District of Pennsylvania. *See* Rule 7.2(a) of the Rules of Procedure

of the United States Judicial Panel on Multidistrict Litigation.

(Ex. 2 at 2, n. 2.) Rochester Drug indicated that it had “notified the judges that are handling these” cases that Rochester Drug “is seeking transfer and coordination of these Related Actions as part of MDL No. 2724.” *Id.*

If Rochester Drug’s motion is successful, it is likely that all of the Pending Pravastatin Actions will be transferred to MDL 2724. Although Rochester Drug’s motion seeks only the transfer of the DPP cases, all parties agree that the DPP and EPP actions pertaining to a particular generic drug should be coordinated before the same judge. Accordingly, Plaintiffs respectfully request that the schedule set forth in the Stipulation Order be adjourned pending the JPML ruling.

In the event that the JPML does not rule shortly after the responses are filed on January 30, the next JPML hearing is scheduled for March 30, and the Panel typically issues its rulings shortly after a hearing session. Once such a ruling is made, or once any intra-district transfer applications have been decided, the question of whether the pravastatin cases will remain before this Court or be transferred to Judge Rufe as part of MDL 2724 will be answered in the next two months.

In light of the uncertainties surrounding the litigation, a short adjournment of the schedule will promote judicial efficiency and conserve judicial resources. It will avoid the potential duplication of work by Your Honor and Judge Rufe, who are now both presiding over pravastatin cases. It will also avoid potentially conflicting rulings on cases that involve substantially the same claims. Finally, it will ensure that the judge who ultimately presides over the cases will have the opportunity to rule on preliminary case management issues such as leadership, which is key to the responsibility of drafting and filing a

consolidated amended complaint. Furthermore, no party will be prejudiced by this short adjournment.

**II. Any New Schedule Must Account for Leadership Briefing**

The schedule set forth in the Stipulation Order does not account for appointment of leadership of the class plaintiffs prior to the filing of the consolidated amended complaint. The schedule, agreed to by the parties in the first two filed complaints, included only deadlines for filing a consolidated amended complaint and for responses to that complaint. Five additional, related EPP cases have been filed by Plaintiffs that were not parties to the December 12 Stipulation:

- a. *Philadelphia Federation of Teachers Health and Welfare Fund v. Actavis Holdco U.S., Inc., et al.*, Case No. 2:16-cv-06321 (E.D. Pa.), filed December 6, 2016.
- b. *Laborers International Union of North America Local 35 Health Care Fund v. Teva Pharmaceuticals USA, Inc., et al.*, Case No. 2:16-cv-06395 (E.D. Pa.), filed December 12, 2016.
- c. *Plumbers & Pipefitters Local 178 Health and Welfare Trust, et al. v. Teva Pharmaceuticals USA, Inc., et al.*, Case No. 2:16-cv-06421 (E.D. Pa.), filed December 14, 2016.
- d. *Fraternal Order of Police, Miami Lodge 20, Insurance Trust Fund v. Actavis Holdco U.S., Inc., et al.*, Case No. 2:16-cv-06667 (E.D. Pa.), filed December 28, 2016.
- e. *Detectives Endowment Association of the City of New York v. Actavis Holdco U.S., Inc., et al.*, Case No. 2:17-cv-00013 (E.D. Pa.), filed January 3, 2017.

And two related DPP cases were filed:

- a. *FWK Holdings, L.L.C. v. Actavis Holdco U.S., Inc., et al.*, Case No. 2:16-cv-6632 (E.D. Pa.), filed on December 27, 2016.
- b. *César Castillo, Inc. v. Actavis Holdco U.S., Inc.*, Case No. 2:16-cv-6699 (E.D. Pa.), filed on December 30, 2016.

These new cases affect the Consolidated Amended Complaint in two ways. First, in light of the additional cases, Plaintiffs respectfully suggest that appointment of interim lead counsel for DPPs and EPPs before any substantive filings—including, especially, the Consolidated Amended Complaints—will facilitate the orderly and efficient prosecution of the case. Plaintiffs therefore request that when a new schedule is entered in this case, it should include a schedule for leadership briefing. To that end, Plaintiffs respectfully request that, if the JPML determines that the Pending Pravastatin Actions will remain before Your Honor, the parties, at that time, be ordered to file a proposed schedule for leadership briefing, the filing of separate Consolidated Amended Complaints by the DPPs and EPPs, and dates for responses to the Complaints.

Second, as noted, two of the newly filed cases were filed by DPPs. Under the terms of the Stipulation Order, all of these new actions—including both the DPP and EPP cases—were consolidated with the initially filed EPP actions. On January 13, 2017, DPP FWK Holdings filed an Objection to the consolidation of the DPP cases with the EPP cases and instead sought entry of an order consolidating the DPP actions separately and coordinating the EPP and DPP actions. (Dkt. No. 10, 2:16-cv-6632). This Objection was joined by DPP César Castillo, Inc. and is supported by the EPPs. The resolution of the

Objection will further affect the filing of the Consolidated Amended Complaint as it will dictate whether the DPPs and EPPs must file joint or separate complaints.

**CONCLUSION**

For the foregoing reasons, Plaintiffs respectfully request that the Court adjourn the schedule set forth in the Stipulation Order pending a ruling by the JPML on whether the cases that comprise *In re Pravastatin Antitrust Litigation* will remain before this Court or be transferred.

Respectfully submitted,

Dated: January 31, 2017

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